

**CALIFORNIA COASTAL COMMISSION**

NORTH COAST DISTRICT OFFICE  
1385 8<sup>TH</sup> STREET • SUITE 130  
ARCATA, CA 95521  
VOICE (707) 826- 8950  
FAX ( 707) 826- 8960



# W11a

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Staff: C. Kenyon-A  
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## STAFF REPORT: MATERIAL AMENDMENT

**Amendment Application No.:** 1-15-2054-A1

**Applicant:** City of Eureka

**Amendment Location:** East of Highway 255 Bridge, and north of Waterfront Drive, along the waterfront of the Eureka Inner Channel of Humboldt Bay, Eureka, Humboldt County (APNs 002-241-13 and 002-241-07).

**Description of Previously Approved Project:** Construct 3.75 miles of Class 1 multi-use trail as part of the California Coastal Trail along the eastern shore of Humboldt Bay and the western bank of Eureka Slough from Truesdale Street to Tydd Street, including a boardwalk, seven bridges, interpretive signs, playgrounds, outdoor workout equipment, landscaping, street crossings, fencing, and drainage improvements; and mitigate for wetland fill impacts at a 4:1 ratio by reestablishing 1.28-acres of tidal salt marsh habitat.

**Proposed Amendment:** After-the-fact authorization for the stockpiling, sorting, spreading, and stabilizing of approximately 6,000 cubic yards of fill material moved from the wetland mitigation site to a vacant, City-owned, upland site.

**Staff Recommendation:** Approval with conditions.

## SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve with conditions the City of Eureka's ("City") proposed amendment to Coastal Development Permit (CDP) 1-15-2054 granted for development of a 3.75-mile segment of the California Coastal Trail (CCT). The amendment proposes after-the-fact authorization for the stockpiling, sorting, spreading, and stabilizing of approximately 6,000 cubic yards of earthen material excavated for mitigation of wetland fill impacts of the originally approved trail over an approximately 4.56-acre area on vacant, largely impervious, upland, City-owned property. K-rails and logs were also placed around the perimeter of the site to bar vehicular use. The subject site is located between Waterfront Drive and Humboldt Bay in the City of Eureka.

The fill has been located outside of any wetlands or ESHA, and abundant public access parking in the area will continue to serve users of the CCT and other public access to the shoreline in the area.

Pursuant to Regional Water Quality Control Board (Regional Board) requirements, the City sampled the material and demonstrated to the satisfaction of the Regional Board staff that stormwater runoff will not present a risk to Humboldt Bay water quality objectives or beneficial uses. Due to the location of fill as close as thirty feet from Humboldt Bay, stormwater runoff from the proposed fill has the potential to affect the water quality of Humboldt Bay by carrying sediment and pollutants from the fill reuse site into bay waters. To address these erosion and runoff concerns, straw wattles were placed between the fill and Humboldt Bay, and the fill was broadcast seeded and covered in straw. To ensure the revegetation of the fill reuse site is successful, Commission staff recommends **Special Condition 25** requiring the Permittee to submit vegetation monitoring reports to the Executive Director every 6 months until the fill reuse site has retained a 70% cover with noninvasive vegetation for one year. To ensure that the perimeter vehicular barriers are visually compatible with the character of the surrounding area, Commission staff also recommends **Special Condition 26** requiring the Permittee to submit a plan for the replacement of all the concrete k-rail perimeter barriers with new vehicle barriers comprised of logs, large rocks, wooded fences, or planted hedgerows. Special Condition 26 would also require the Permittee to maintain the perimeter barriers in a manner that continues to prevent off-road vehicular activity, but does not obstruct public access to the shoreline. Finally, Commission staff recommends **Special Condition 24** requiring maintenance of the fill reuse site to keep the site free of debris and plant species listed as problematic and/or invasive.

Violations of the Coastal Act exist on the subject property including, but not limited to, the deposition of 6,000 cubic yards of fill material without permit authorization in December 2017. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will bring the unpermitted development into conformance with CDP requirements.

Staff believes that the proposed amendment, as conditioned, is consistent with all applicable Chapter 3 policies of the Coastal Act. The motion to adopt the staff recommendation of approval with special conditions is on [page 4](#).

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### EXHIBITS

[Exhibit 1](#) – Regional Location Map

[Exhibit 2](#) – Project Vicinity

[Exhibit 3](#) – Historic Aerial Photographs

[Exhibit 4](#) – Erosion and Runoff Controls for the Fill Reuse Site

[Exhibit 5](#) – Site Photographs

[Exhibit 6](#) – Excerpts from the Adopted Findings of CDP 1-15-2054

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit No. 1-15-2054 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

*The Commission hereby approves the coastal development permit amendment on the grounds that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.*

## II. STANDARD AND SPECIAL CONDITIONS

**Note:** Coastal Development Permit (CDP) 1-15-2054 was approved on May 11, 2016 pursuant to five (5) standard conditions and twenty-two (22) special conditions. Standard Conditions 1, 3, 4, and 5; and all 22 special conditions of CDP 1-15-2054 remain in full force and effect for CDP Amendment 1-15-2054-A1. Special Conditions 23-26 are new conditions added to CDP Amendment 1-15-2054-A1. [Appendix B](#) includes all standard and special conditions that apply to the amended development, as approved by the Commission in its original action and as modified and/or supplemented by this amendment.

The following conditions are new conditions added to CDP Amendment 1-15-2054-A1:

23. **Permit Amendment Issuance and Condition Compliance.** Because the development proposed under CDP Amendment 1-15-2054-A1 has already commenced, this coastal development permit amendment shall be deemed issued upon the Commission's approval. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.
24. **Site Maintenance.**
  - A. The fill reuse site shall be maintained in a debris-free state, including immediate removal of all refuse, dumped debris, and any potentially hazardous or contaminated

- materials such as scrap metal, asphalt, tires, and wood containing lead-based paint or wood preservative.
- B. The fill reuse site shall be maintained at a minimum of 70% cover with non-invasive vegetation after initial establishment.
  - C. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist at the fill reuse site.
25. **Site Monitoring.** The Permittee shall submit vegetation monitoring reports to the Executive Director every 6 months until the fill reuse site has reached a minimum of 70% cover with noninvasive vegetation and the site has retained a minimum of 70% cover with noninvasive vegetation for one year. The reports shall include photographs, a map, the percentage of the 4.56-acre fill reuse site covered in noninvasive vegetation, the degree to which any problematic or invasive plant species occupy the fill reuse site, and a narrative discussion analyzing the reasons for any failure to achieve or maintain the 70% non-invasive vegetative cover standard and providing recommendations for achieving the standard and for abating problematic or invasive plant species.
26. **Vehicular Access Barriers Replacement and Maintenance Plan.**
- A. WITHIN 6 MONTHS OF THE DATE OF COMMISSION ACTION ON PERMIT AMENDMENT NO. 1-15-2054-A1 (UNLESS EXTENDED BY THE EXECUTIVE DIRECTOR FOR GOOD CAUSE), the Permittee shall submit a plan for the removal of all concrete k-rail perimeter barriers at the fill reuse site and for the installation of new vehicle barriers to be retained on site.
    - i. The plan shall demonstrate that the perimeter barriers to be retained on site:
      - a. Shall not obstruct pedestrian public access along the right-of-way of Front Street, the vertical public access trail to the east of the fill reuse area, or the California Coastal Trail;
      - b. Shall be maintained to ensure that vehicles remain blocked from damaging the vegetative cover and contributing to erosion of the site and sedimentation of the bay;
      - c. Shall be comprised of logs, large rocks, wooded fences, or planted hedgerows no taller than four feet and maintained in natural colors free of graffiti to ensure that the barriers are visually compatible with the character of the surrounding area with respect to height and bulk, and shall not significantly obstruct views from public vantage points.
    - ii. The plan shall contain at a minimum:
      - a. A site plan showing the location and footprint of all perimeter barriers;
      - b. Design specifications for all perimeter barriers;
      - c. Measures to control and remove graffiti; and
      - d. A schedule for the inspection and maintenance of the perimeter barriers to ensure they continue to prevent vehicular access to the areas where fill has been placed and seeded and to control graffiti.
  - B. WITHIN 1 YEAR OF THE DATE OF COMMISSION ACTION ON PERMIT AMENDMENT NO. 1-15-2054-A1 (UNLESS EXTENDED BY THE EXECUTIVE

DIRECTOR FOR GOOD CAUSE), the Permittee shall remove all concrete k-rail at the fill reuse site and replace with perimeter barriers consistent with the approved plan required by Part A of this condition.

### III. FINDINGS AND DECLARATIONS

#### A. AMENDMENT DESCRIPTION

The City of Eureka (“City”) proposes to amend Coastal Development Permit (CDP) 1-15-2054 granted for development of a 3.75 mile segment of the California Coastal Trail to provide after-the-fact authorization for stockpiling, sorting, spreading, and stabilizing approximately 6,000 cubic yards of fill on vacant land surrounding Front Street directly east of the Highway 255 Bridge, between Waterfront Drive and Humboldt Bay in the City of Eureka (APNs 002-241-13 and 002-241-07; See Exhibits 1-2). The fill was excavated for mitigation of wetland fill impacts of the originally approved trail.

CDP 1-15-2054, approved by the Commission in May 2016, authorized (1) construction of 3.75 miles of the California Coastal Trail (known locally as the Eureka Waterfront Trail), and (2) mitigation for wetland fill impacts of the trail, including removal of historic fill to reestablish 1.28-acres of tidal saltmarsh habitat on Eureka Slough. **Special Condition 11** of the original CDP required adherence to various construction-related responsibilities so that no construction materials, debris, or waste would be allowed to enter coastal waters or be placed where it could be washed by rainfall or runoff into coastal waters. **Special Condition 11** included a requirement that any excess excavated material and other construction debris resulting from construction activities must be removed immediately upon completion of component construction, and must be disposed of at a disposal site outside the coastal zone or within the coastal zone pursuant to a valid CDP.

When the City removed historic fill from the wetland mitigation site in December of 2017 pursuant to CDP 1-15-2054, the fill was moved to nearby land within the coastal zone without CDP authorization, inconsistent with **Special Condition 11** of the original permit. Thus the City is now seeking after-the-fact authorization for the stockpiling, sorting, spreading, and stabilizing of the fill on the subject property as an amendment to CDP 1-15-2054.

The City-owned property where the fill has been spread is mostly impervious, comprised of graded and compacted fill and foundations of former structures associated with a historic lumber mill that once occupied the site. The wetland mitigation site for the Eureka Waterfront Trail project is located less than one half mile east of the subject property at the foot of Y Street (APN 002-231-04). Approximately 6,000 cubic yards of soil and waste material was excavated from the wetland mitigation site, trucked to the subject property, and dumped on site in large stockpiles. These piles were first mechanically screened with a four inch screen (by “Powerscreen” heavy equipment) to remove large waste material, and then the fill was manually screened by hand to remove remaining debris over four inches in size that passed through the mechanical screen. The material removed included concrete, asphalt, rubber, brick, metal, wood, and other debris, including four creosote-treated utility poles.

This waste material was hauled offsite and disposed of at authorized locations,<sup>1</sup> while an excavator and bulldozer were utilized to spread the remaining fill material approximately one foot deep across an approximately 4.56-acre upland area. The relocated fill was not compacted but was lightly graded by the bulldozer to ensure a relatively flat site and to avoid a slope towards the bay. See Exhibit 5, page 1 for photographs of the fill sorting and spreading process.

Once the fill was spread and remaining visible debris was manually removed, the fill was broadcast seeded and covered in straw to stabilize the soil and prevent erosion. Vegetation is now growing over much of the fill (See Exhibit 5, pg. 5 for photographs of the site in June 2018). As required by the Stormwater Pollution Prevention Plan (SWPPP) for the Eureka Waterfront Trail project, a native seed mix was used within 50 feet of the bay and a non-native, non-invasive erosion control mix was used for the rest of the site. The seed mixes used to stabilize the upland area are consistent with **Special Condition 2** of the original permit, which required that only native and/or non-invasive plant species be planted as part of the trail project. Because the project site is subject to reoccurring illegal vehicle off-roading, the City placed k-rails and logs around the perimeter of the site to prevent further damage and allow the vegetation to establish.

## **B. SETTING & BACKGROUND**

The City of Eureka is located on the inner shoreline of Humboldt Bay. The fill reuse site is a publicly accessible City-owned property located on filled former tidelands on the southern bank of the Eureka Inner Channel of Humboldt Bay. The proposed fill covers a total of 4.56-acres of two City-owned parcels that extend over approximately eleven acres of the waterfront. Approximately 83% of the fill reuse site was previously impervious, covered by asphalt, concrete, or compacted base. The permeable areas where fill has been placed were uplands covered by ruderal vegetation.

The approach to the Highway 255 Bridge, a public boat launch ramp, public parking area, and public park (Halvorsen Park) are located to the west of the site, and privately owned vacant land is located to the east. A drainage ditch is located directly to the northeast of the site, and Wedge Slough, a tidally influenced drainage channel, is located approximately 300 feet east.

The California Coastal Trail (CCT) is located along the northern perimeter of the fill reuse site where the site fronts Humboldt Bay.<sup>2</sup> There is also a paved vertical access trail along the eastern edge of the fill reuse site from Front Street to the CCT. The vacant area where the fill has been

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<sup>1</sup> The City has provided receipts from Frank Zabel Trucking, Inc., Eel River Scrap & Salvage, Eel River Recology, and Anderson Landfill Waste Management reporting transfers and acceptance of various amounts of debris. Creosote logs and treated wood went to the Anderson Landfill; the steel was scraped; the concrete and base went to the contractors yard to be crushed and recycled; and the miscellaneous garbage and other waste went to Eel River Recology.

<sup>2</sup> The Eureka Waterfront Trail, permitted under CDP 1-15-2054, connects to a network of existing trail segments to create a nearly continuous 6.3-mile-long CCT route spanning the vast majority of the City's shoreline from southern Eureka to northeastern Eureka, paralleling Humboldt Bay and the west bank of Eureka Slough. At the project site, the Eureka Waterfront Trail connects to the Adorni/Halvorsen Trail.

moved has been used for at least a decade as a place where people typically park for lunch or to walk pets. Although cars can no longer park on the vegetated areas where the fill has been placed, there is still ample public parking available on and adjacent to the City-owned parcels, including an official public parking lot directly to the west of the fill reuse site under the approach to the Highway 255 Bridge, and a paved lot that is used by the public at the southeast corner of the fill reuse site. The fill avoids, but is located directly inland of the CCT and has also been sited to avoid the vertical public access trail from Front Street to the CCT, public access parking under the Highway 255 Bridge, and adjacent public streets (Front Street and Waterfront Drive).

Most of the Eureka waterfront was previously the site of industrial development, much of which is now gone, leaving only traces of the waterfront's past as an area dominated by lumber mills, warehouses, and railroads. The fill reuse site was once part of the historic Carson Lumber Mill and has become an open gravel and dirt lot covered with remnant fill material and foundations of former mill structures.

In 2004, the City issued a CDP for remediation of the area of a former foundry operation of the previous lumber mill. The remediation affected a 1.88-acre portion of the proposed fill reuse area. Lead, zinc, total petroleum hydrocarbons (TPH), and polyaromatic hydrocarbons (PAHs) were detected in soil from the ground surface (or near surface) to the shallow groundwater table at approximately four to five feet below ground surface, as well as in groundwater results from temporary well points. With the funding of a United States Environmental Protection Agency brownfield grant, the City removed contaminated soil and backfilled the excavated area with 1,067 tons of imported material. According to the State Water Resources Control Board GoTracker, there is currently no active cleanup case on the site.

The wetland mitigation site where the fill originated is located less than one half mile east of the subject property at the foot of Y Street. A historic aerial photograph of the Eureka shoreline from 1958 (Exhibit 3, pg. 1) indicates that the mitigation site was formerly tidal saltmarsh. Subsequent aerial photographs from 1965 and later show a growing fill peninsula within the saltmarsh between the railroad tracks and Eureka Slough (Exhibit 3). The City mitigated for 0.32 acres of permanent wetland fill impacts resulting from the development of the Eureka Waterfront Trail at a 4:1 mitigation ratio by removing this historic fill at the 1.28-acre mitigation site to achieve elevations matching the grades of the existing adjacent salt marsh plain, and replanting or reseeded with salt marsh vegetation (See Exhibit 6 for excerpts from the adopted findings for CDP 1-15-2054).

### **C. STANDARD OF REVIEW**

The Eureka Waterfront Trail project includes areas within the CDP jurisdiction of the Commission and the CDP jurisdiction delegated to the City of Eureka by the Commission through the City's certified local coastal program (LCP).

Section 30601.3 of the Coastal Act authorizes the Commission to process a consolidated CDP application when requested by the local government and the applicant and approved by the Executive Director for projects that would otherwise require CDPs from both the Commission and a local government with a certified LCP. In this case, the City of Eureka's Parks and



Recreation Department requested a consolidated permit process and the City of Eureka's Development Services Director agreed to the request on behalf of the City Council on November 25, 2015. The Executive Director also agreed to the consolidated permit processing request.

The policies of Chapter 3 of the Coastal Act provide the legal standard of review for a consolidated CDP application submitted pursuant to Section 30601.3. The local government's certified LCP may be used as guidance.

#### **D. OTHER AGENCY APPROVALS**

##### **Humboldt County Environmental Health**

Humboldt County Environmental Health investigated the fill reuse on the City's property and determined that it does not fall within the department's jurisdiction.

##### **U.S. Army Corps of Engineers**

The Army Corps has authorized the Eureka Waterfront Trail project under Department of the Army Nationwide Permit (NWP) 14 Linear Transportation Projects, 77 Fed. Reg. 10,184, February 21, 2012 (File No. 2015-00265N). The U.S. Army Corps of Engineers was informed about the fill stockpiling, sorting, spreading, and stabilizing, and did not require any supplemental authorization for this development.

##### **North Coast Regional Water Quality Control Board**

The Regional Water Board issued Clean Water Act Section 401 Water Quality Certification ("certification") to the City of Eureka for the Eureka Waterfront Trail project on April 20, 2016 (WDID No. 1B15156WNHU). Condition 13 of the certification states, "No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this certification, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the state." Condition 17 of the certification also requires that "all Project work shall be conducted as described in this certification and in the application submitted by the Applicant..." The City's certification application noted that "[t]he 9,636 cubic yards of fill excavated from the mitigation site will be disposed of at an approved upland location." The Regional Board learned of the subject fill stockpiling, sorting, spreading, and stabilizing after the fact in December 2017. To ensure compliance with the aforementioned conditions of certification, the Regional Board required additional characterization of the fill to demonstrate that the fill material is not a threat to water quality and that the current reuse location is an appropriate upland disposal location. The City subsequently submitted a sampling plan and results for fill material characterization, in addition to information on removal of debris from the fill and information on implementation of an updated Stormwater Pollution Prevention Plan for the Waterfront Trail project covering the fill reuse area. Based on this supplemental information, the Regional Board ultimately determined in March 2018 that stormwater runoff from the fill area will not present a risk to Humboldt Bay water quality objectives or beneficial uses. Thus the fill reuse site was determined to be an acceptable disposal location in compliance with the original 401 certification for the Eureka Waterfront Trail project.

## E. MARINE RESOURCES & WATER QUALITY

Section 30230 of the Coastal Act states as follows:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states as follows:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The proposed development involves the relocation of fill from a mitigation site to as close as approximately thirty feet from the Humboldt Bay shoreline and approximately thirty feet from a drainage ditch located to the northeast of the fill site (that also drains into Humboldt Bay). Due to its location, stormwater runoff from the proposed fill has the potential to affect the water quality of Humboldt Bay by carrying sediment and pollutants from the reuse area into bay waters, which in turn could affect aquatic species including threatened salmonids.<sup>3</sup>

### **Controlling Runoff**

To address these erosion and runoff concerns, the Storm Water Pollution Prevention Plan (SWPPP) prepared for the Eureka Waterfront Trail project was amended to encompass the proposed reuse site. As illustrated in the updated SWPPP map included as Exhibit 4, straw wattles were placed around the northern and eastern sides of the reuse area to prevent sediment-laden waters from discharging into the bay to the north of the project site or into the drainage ditch to the northeast of the project site. In addition, the fill was broadcast seeded and covered in straw prior to any rain event. According to the SWPPP, the straw wattles will be kept in place and the site will continue to be monitored and inspected until at least 70% of the site is covered in established vegetation. Because the project site previously has been subject to reoccurring illegal off-road vehicle use, the City also placed k-rails and logs

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<sup>3</sup> Humboldt Bay is habitat for federally threatened green sturgeon (*Acipenser medirostris*), federally threatened California Coast Evolutionary Significant Unit (ESU) chinook salmon (*Oncorhynchus tshawytscha*), federally threatened Southern Oregon and Northern California Coast ESU coho salmon (*Oncorhynchus kisutch*), Northern California ESU steelhead (*Oncorhynchus mykiss*), federally endangered tidewater goby (*Eucyclogobius newberryi*), and state listed longfin smelt (*Spirinchus thalyichthys*).

around the perimeter of the site to bar vehicular use and prevent further damage to allow the vegetation to establish. As discussed in Finding III-H below, **Special Condition 26** requires submittal of a plan to replace the k-rail barriers with barriers designed to be more visually compatible with the character of the area, and requires that the barriers be maintained to ensure that vehicles remain blocked from damaging the vegetative cover and contributing to erosion of the site and sedimentation of the bay. Construction equipment utilized on the site was stored in upland areas near Front Street over 100 feet from coastal waters and wetlands. These best management practices (BMPs) are consistent with the construction responsibilities outlined in **Special Condition 11** of the original permit (reimposed under this amendment). See Exhibit 5, page 2 for photographs of the construction BMPs.

According to City staff, the fill reuse site has in the past been regularly subject not only to off-road vehicular activity, but also to other types of vandalism, dumping, transient activity, and the invasion of exotic plants including Pampas grass from nearby vacant properties. To ensure an effective vegetated cover is established and maintained on the fill to serve its erosion control function, the Commission attaches **Special Conditions 24 and 25**. **Special Condition 24** requires ongoing maintenance of at least 70% vegetative cover with non-invasives after initial establishment, and requires that no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist at the fill reuse site. **Special Condition 25** requires the Permittee to submit vegetation monitoring reports to the Executive Director every 6 months until the fill reuse site has reached a minimum of 70% cover with noninvasive vegetation and the site has retained a 70% cover with noninvasive vegetation for one year.

Therefore, the Commission finds that the amended development, as conditioned, will maintain marine resources and the biological productivity and quality of coastal waters consistent with the requirements of Sections 30230 and 30231 of the Coastal Act.

### **Addressing Potential Contamination**

When stockpiled and spread at the project site, the fill material had the potential to contain contaminated soil and/or contaminated debris materials that could leach into adjacent soils, both of which could result in pollutants becoming mobilized, entering bay waters, and threatening the marine habitat.

A “Hazardous Materials Corridor Study” was prepared for the Eureka Waterfront Trail project that includes an assessment of the source site for the subject fill (i.e. the saltmarsh mitigation area), identified in the study as the “East Field,” “Map ID-6.” The East Field was given a hazard rank of “3” which is defined as a site that is not known to be contaminated, but due to current or historical use could possibly have contamination that could affect project construction. The following paragraph discusses why the saltmarsh mitigation area was assigned Hazard Rank 3:

*A portion of the East Field Project segment includes the central portion of APN 002-231-004 (Map ID 6). Documented releases of COCs [contaminants of concern] to soil and groundwater on this property were not identified in the research completed for this Corridor Study. Review of historical aerial*

*photograph and site reconnaissance indicates that the northern and eastern portions of Map ID-6 were formerly tide flats and have been filled with various materials (soil, concrete, wood and other miscellaneous construction/building debris). Research completed during preparation of this Corridor study did not identify the source of fill material in this portion of this Project segment and its origin is unknown. As the source of the fill materials are unknown and historical development of this parcel appears to be industrial, there is the potential for soil and groundwater impacts in the vicinity, and downgradient of, fill materials on this property. Fill materials encountered within this portion of the Project may include wood debris from treated lumber.*

Given the unknown source and content of the fill material to be excavated at the saltmarsh mitigation site, the Hazardous Materials Corridor Study recommended pre-construction soil borings in order to characterize soil and groundwater, and **Special Condition 12** of the original CDP required that the recommended pre-construction soil borings be completed prior to commencement of construction. As recommended by the study and required by the permit condition, prior to commencement of the mitigation work, the City dug six test pits at the saltmarsh mitigation site. According to the City, the test pits revealed that the fill contained concrete, woody debris, and some scrap metals, but there was no visual or sensory evidence of contaminated material. Based on these initial observations, the City tested the material for CAM-17 metals in two spots. The toxic metal sampling results were below hazardous waste levels (based on California Environmental Protection Agency standards).

As discussed above, the City's application for the original project indicated that the fill excavated from the mitigation site would be disposed of at an approved upland location; and **Special Condition 11** of the original CDP requires that excavated material be disposed of at a disposal site outside the coastal zone or within the coastal zone pursuant to a valid CDP, and that any potentially hazardous waste material be disposed of at an approved Class II landfill that is equipped to handle hazardous waste. Given the proposed testing of the material to be removed and the proposed removal of the material to an authorized disposal site to avoid impacts to water quality, the City's proposed disposal plan was deemed adequate to the Coastal Commission and the Regional Board when the original project was approved. However, instead of disposing of the fill at an approved upland location, the fill was moved to the subject property for reuse on site.

The fact that the material was reused at a nearby bayfront location rather than being disposed of at an authorized disposal site resulted in the Regional Board requiring additional characterization of the fill to demonstrate that reuse of the fill at the current location does not pose a threat to water quality. The Regional Board required that a waste extraction test for metals be completed, as well as testing for a host of other constituents of concern, including total petroleum hydrocarbons (THP gas, diesel, and motor oil), polycyclic aromatic hydrocarbons (PAHs), dioxins, pentachlorophenol, pesticides, and polychlorinated biphenyls (PCBs). The City subsequently submitted a sampling plan and the Regional Board concurred with the plan in February 2018.<sup>4</sup> The Regional Board reviewed the sampling results and

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<sup>4</sup> The approved sampling plan involved dividing the fill area into two discrete areas and collecting four composite samples from each area for the constituents of concern. The final approved list of constituents of concern included

concluded that based on the test results, stormwater runoff from the fill soil will not present a risk to Humboldt Bay water quality.

While the testing indicates that the fill soil does not contain elevated levels of constituents of concern, the possibility remained that debris materials in the fill soil could contain toxic substances that overtime could leach into surrounding soil. As described above, the excavated material from the saltmarsh mitigation site was directed through a 4-inch mechanical screen to remove foreign debris before being spread. However, Commission staff visited the site in December 2017 when approximately one fourth of the material had been sorted and spread, and staff observed large pieces of debris in the spread material including tires and scrap metal. The City's environmental consultant later visited the site and required the contractor to handpick and remove remaining debris from the spread material. From that point forward, the contractor was required to have continual monitoring of the screened material and ensure all visible metal, rubber, and concrete material was removed prior to being spread and graded. After the material was spread, the contractor once again manually screened the entire area. The consultant visited the site again in December and dug eight test pits with a shovel, finding mostly clean fill but also small pieces (less than two inch diameter) of woody debris, rocks, pieces of brick, and concrete.

Commission staff visited the site again in February 2018 and observed some metal, concrete, and other unsuitable debris greater than four inches in size. The City performed a follow-up survey of the site in early March and removed residual debris. In an email to Commission staff dated February 28, 2018, City staff attributed the residual debris to illegal dumping, explaining that City staff regularly removes household trash, old clothing, bedding, mattresses, construction and demolition debris and other dumped items from the site. Commission staff visited the site again in June 2018 and again identified some residual debris. See Exhibit 5, page 4 for photographs of debris material observed on site from December 2017 through June 2018.

To ensure the City continues to monitor the site and remove debris on an ongoing basis, the Commission attaches **Special Condition 24** requiring ongoing maintenance of the site in a debris-free state, including immediate removal of all refuse, dumped debris, and any potentially hazardous or contaminated materials including but not limited to scrap metal, asphalt, tires, and wood containing lead-based paint or wood preservative.

Therefore, the Commission finds that as conditioned, the amended development has been sited and designed to maintain the biological productivity and quality of the adjoining coastal waters by avoiding impacts associated with mobilization of potential contaminated soils in stormwater runoff consistent with Sections 30230 and 30231 of the Coastal Act.

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CAM-17 metals, THPs, Polychlorinated Dibenzo-p-Dioxins, Polychlorinated Dibenzofurans, Organochlorine Pesticides, PCBs, Pentachlorophenol, Polynuclear Aromatic Hydrocarbons, Mercury, Organotin Compounds, TOC, and Total Chromium.

## F. ARCHAEOLOGICAL RESOURCES

Section 30244 of the Coastal Act states as follows:

*Where development would adversely impact archeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The project area lies within the traditional territory of the Wiki division of the Wiyot tribe. The tribe is understood to have included three tribal divisions (Patawat, Wiki, and Wiyot), each associated with a water-related resource (the Mad River, Humboldt Bay, and the lower Eel River, respectively) and each speaking a common language (Selateluk). Today, representatives of the Wiyot Tribe are the Table Bluff Reservation Wiyot Tribe, the Blue Lake Rancheria, and the Bear River Band of the Rohnerville Rancheria.

Roscoe & Associates prepared two archaeological survey reports for the Eureka Waterfront Trail project in 2014 and 2015, one for Phases A and B and one for Phase C of the trail development. Their analysis included a records search; review of historic maps, aerial photographs, ethnographic materials, and previous archaeological investigations in the project vicinity; field surveys of the entire project area; and consultation with the Tribal Historical Preservation Officers (THPOs) of the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria.

Based on the results of the archaeological survey reports and tribal consultation, the Commission attached **Special Condition 14** to the original CDP to ensure protection of any archaeological resources that may be discovered at the site during construction of the project. This special condition requires in part that if an area of cultural deposits is discovered during the course of the project, all construction must cease and a qualified cultural resource specialist, in conjunction with the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria THPOs, must analyze the significance of the find. To recommence construction following discovery of cultural deposits, the permittee is required to submit a supplementary archaeological plan for the review and approval of the Executive Director, who determines whether the changes are de minimis in nature and scope, or whether an amendment to this permit is required. The condition also requires that the THPOs be notified at least two weeks prior to any ground disturbing activities greater than twelve inches in depth, and that a cultural resources monitor approved by the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria be present to oversee all ground disturbing activities greater than 12 inches in depth authorized by CDP 1-15-2054 unless evidence has been submitted for the review and approval of the Executive Director that the THPOs of these three entities have agreed that a cultural resources monitor need not be present.

The fill reuse site was not included in the original project area and therefore was not covered by the original archaeological review. To address this omission, Caltrans prepared a memorandum in October 2017 as part of NEPA revalidation to provide supplemental cultural resources clearance for the expanded project area (Caltrans acted as the NEPA lead agency for the project). According to the memorandum, since the closure of the lumber mill and removal of the mill

structures, the fill reuse site has been used as a staging area for a variety of large construction projects, including the building and retrofitting of the Highway 255 Bridge over Humboldt Bay. Based on previous archaeological analysis of the site for the bridge project and on the scope of the proposed work, the memorandum found that the proposed use of the location would not have any potential to impact cultural resources.

Commission staff contacted the THPOs of the Table Bluff Reservation Wiyot Tribe, the Blue Lake Rancheria, and the Bear River Band of the Rohnerville Rancheria in December 2017 after receiving a CDP amendment application from the City for after-the-fact authorization of the fill stockpiling, sorting, spreading, and stabilizing. Based on the facts that the site is already covered with fill from the historic lumber mill operation and the project involves deposition of fill on top of that existing fill with no significant depth of ground disturbance, the three THPOs did not recommend that further archaeological surveys be conducted at the site, but did recommend that the amended development be subject to the protocol for inadvertent discovery of cultural resources required by **Special Condition 14** of the original permit. **Special Condition 14** has been reimposed and remains in full force and effect under this amendment.

Therefore, the Commission finds that the proposed amended development, as conditioned, includes reasonable mitigation measures and is consistent with Coastal Act Section 30244.

### G. PUBLIC ACCESS

Coastal Act Sections 30210, 30211, 30212 and 30214 require the provision of maximum public access opportunities, with limited exceptions. Coastal Act Section 30210 requires in applicable part that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection. Section 30211 requires in applicable part that development not interfere with the public's right of access to the sea where acquired through use (i.e., potential prescriptive rights or rights of implied dedication). Section 30212 requires in applicable part that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects, except in certain instances, such as when adequate access exists nearby or when the provision of public access would be inconsistent with public safety. Section 30214 of the Coastal Act identifies the need to regulate the time, place and manner of public access depending on the facts and circumstances in each case. In applying Sections 30210, 30211, 30212, and 30214, the Commission is limited by the need to show that any denial of a permit application based on these sections or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential public access.

The subject fill has been moved to a publicly accessible City property located along the shoreline of the Eureka Inner Channel of Humboldt Bay. The California Coastal Trail<sup>5</sup> (CCT) is located along the northern perimeter of the fill reuse site where the site fronts Humboldt Bay. There is also a paved vertical access trail along the eastern edge of the fill reuse site from Front Street to the CCT. A public park (Halvorsen Park) and boat launch are located directly west of the site. See Exhibit 2, pg. 2 for a map of these various public access facilities. The fill is located directly

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<sup>5</sup> The project site is where the Adorni/Halvorsen Trail connects to the recently constructed Eureka Waterfront Trail.

inland of the CCT and does not in any way impact coastal access along the trail. The fill has also been sited to avoid the vertical public access trail from Front Street to the CCT, public access parking under the Highway 255 Bridge, and adjacent public streets (Front Street and Waterfront Drive).

The area where the fill has been placed has been used for at least a decade for parking by people gaining access to the bay shoreline and for use as a place where people typically park for lunch or to walk pets. It has also been used for unpermitted camping, both in cars and RVs, as well as tent or tarp camping. Public access through the area to the shoreline was temporarily restricted during the stockpiling, sorting, and spreading of the fill. However, access through the area is again open to the public for non-motorized access.

Because off-road vehicle use was damaging the vegetation that was seeded on the fill for erosion control purposes, the City has placed k-rails and logs around the perimeter of the entire site to prevent additional damage from vehicles (See Exhibit 5, pg. 3 for photographs of the k-rails and logs). By seeding the fill reuse site with vegetation and lining the area with k-rail and logs, the City has eliminated the ability to park where the fill has been deposited. However, this loss of the parking use that previously occurred within the fill reuse area will not inhibit public access to the shoreline because there is adequate and ample parking for public access use nearby, including an official public parking lot directly to the west of the fill reuse site under the approach to the Highway 255 Bridge, and a paved lot that is used by the public at the southeast corner of the fill reuse site.

The City would like to permanently retain the perimeter barriers to prevent vehicles from destroying the site vegetation while still allowing pedestrian access to the site. As described further in the visual resource section below, the Commission attaches **Special Condition 26** to the permit amendment. **Special Condition 26** requires in part submittal of a plan to ensure that the perimeter barriers to be retained on site do not obstruct pedestrian public access routes currently accessible to pedestrians, including the right-of-way of Front Street, the vertical public access trail to the east of the fill reuse area, and the CCT.

For all of these reasons, the Commission finds that the proposed amended development, as conditioned, is consistent with the public access policies of the Coastal Act.

## **H. VISUAL RESOURCES**

Section 30251 of the Coastal Act states in applicable part:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality of visually degraded areas.*

Prior to the placement of the fill, the subject site was covered with the broken-up remnants of building foundations and pavement from a former lumber mill operation, mixed with ruderal



vegetation, including invasive Pampas grass. The placement of fill and the planting of that fill with a noninvasive grass seed mix have improved the overall visual quality of the area (See Exhibit 5, pg. 5). Because the fill was spread one foot deep and lightly graded, the fill does not block views of the bay or alter the historic flat landform of the site.

As discussed above, the site has been regularly subject to vandalism, off-road vehicular activity, and illegal dumping all of which could easily lead to the degradation of the visual quality of the site. Thus, to ensure that the visual quality of the site continues to be protected, the Commission attaches **Special Condition 24** requiring that the vegetation be maintained at a minimum of 70% cover after initial establishment, and that the fill reuse site be kept in a debris-free state. The Commission also attaches **Special Condition 25** requiring the Permittee to submit vegetation monitoring reports to the Executive Director every 6 months until the site has retained a 70% cover with noninvasive vegetation for one year, and **Special Condition 26** requiring in part that perimeter barriers to vehicular access be maintained to ensure that vehicles are blocked from damaging the vegetative cover.

As discussed above, k-rails and logs have been added to the perimeter of the site to prevent access from off-road vehicles (See Exhibit 5, pg. 3 for photographs of the k-rails and logs). The k-rail is not visually compatible with the character of the area including the character of nearby public amenities including Halvorsen Park and the CCT. Halvorsen Park includes grassy fields occasionally bounded by a low hedgerow. The CCT is well-maintained with permanent bollards and striping. The k-rail appears temporary and its concrete material and graffiti stand out in an otherwise natural grassy environment. Therefore the Commission attaches **Special Condition 26** requiring the Permittee to submit, within six months of the date of Commission action on the subject permit amendment, a plan for removal of all concrete k-rail perimeter barriers and replacement with new vehicle barriers to be retained on site comprised of logs, large rocks, wooded fences, or planted hedgerows. **Special Condition 26** also requires that all perimeter barriers retained on site be comprised of natural materials and colors and be no taller four feet, the approximate height of the k-rail to be replaced, in order to ensure that the barriers are visually compatible with the character of the surrounding area with respect to height and bulk, and do not significantly obstruct views from public vantage points.

The Commission therefore finds that the proposed amended development, as conditioned, will be consistent with Section 30251 of the Coastal Act.

## **I. VIOLATION**

Violations of the Coastal Act exist on the subject property including, but not limited to, placement of 6,000 cubic yards of fill material without permit authorization. CDP 1-15-2054 authorized the construction of 3.75 miles of the California Coastal Trail along the City's waterfront, as well as mitigation for the wetland fill impacts of the trail at a 4:1 ratio by removal of historic fill to reestablish 1.28-acres of tidal salt marsh habitat. **Special Condition 11(G)** of CDP 1-15-2054 required in part that any excess excavated material resulting from construction activities be removed immediately upon completion of component construction, and disposed of at a disposal site outside the coastal zone or within the coastal zone pursuant to a valid CDP. Approximately 6,000 cubic yards of fill material excavated from the wetland mitigation site was

subsequently placed within the coastal zone without a CDP in violation of **Special Condition 11(G)**.

Although development has taken place prior to submission of this permit amendment application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit amendment does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit. In fact, approval of this permit amendment is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit amendment approval for engaging in unpermitted development, unless and until the conditions of approval included in this permit amendment are satisfied. As acknowledged by **Special Condition 23**, failure to comply with the terms and conditions of this permit amendment may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

## **J. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The City of Eureka served as the lead agency for the purposes of CEQA review. The City evaluated the three phases of the trail in separate environmental documents. A Mitigated Negative Declaration (MND) was adopted for Phase A in October 2014 (State Clearinghouse Number 2014092033), Phase B in June 2012 (State Clearinghouse Number 2012052053), and Phase C in March 2014 (State Clearinghouse Number 2014022050). In addition, the Federal Highway Administration designated Caltrans to act as the National Environmental Policy Act (NEPA) lead agency on its behalf. Caltrans determined that all phases of the project qualify for a Categorical Exclusion (CE) under 23 CFR 771.117(c)(3) [Caltrans issued one CE for Phase C in September 2014 and a separate CE for Phases A and B in November 2014]. To address the subject fill reuse, Caltrans updated the original CE for Phase C of the Eureka Waterfront Trail project, making a determination in December 2017 that with the additional documentation, the original CE remains valid. The City has made the determination that no CEQA reauthorization or amendment is necessary.

Section 13096 of the Commission's administrative regulations requires Coastal Commission approval of CDP applications to be supported by a finding showing the application, as modified by any conditions of approval, is consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are any feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. As discussed above, the project as proposed to be amended has been conditioned to be consistent with the policies of the Coastal Act. The findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As specifically discussed in

these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment. Therefore, the Commission finds that the proposed amended development, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

1-15-2054-A1 (City of Eureka)

**APPENDIX A  
SUBSTANTIVE FILE DOCUMENTS**

File for Coastal Development Permit No. 1-15-2054-A1

File for Coastal Development Permit No. 1-15-2054

Commission files for local Coastal Development Permit Nos. 1-EUR-04-229 and 1-EUR-10-114

**APPENDIX B**  
**ALL STANDARD AND SPECIAL CONDITIONS THAT APPLY TO CDP**  
**AMENDMENT 1-15-2054-A1**

**STANDARD CONDITIONS**

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**SPECIAL CONDITIONS**

**1. Final Site and Construction Plans**

- A. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF EACH PHASE OF THE COASTAL TRAIL PROJECT AUTHORIZED BY COASTAL DEVELOPMENT PERMIT 1-15-2054 on Exhibit 2, the permittee shall submit for the review and written approval of the Executive Director, final site and construction plans that are consistent with the project description and plans submitted to the Commission and attached as Exhibits 3 and 5, and consistent with all special conditions of Coastal Development Permit 1-15-2054.
  - (a) The plans shall include, at a minimum, plan and profile architectural drawings for all segments of the trail including bridges, boardwalk, trailheads, and railway, roadway, and driveway crossings.
  - (b) The final project plans shall also identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view.

- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

## **2. Final Landscaping Plans**

- A. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF EACH PHASE OF THE COASTAL TRAIL PROJECT AUTHORIZED BY COASTAL DEVELOPMENT PERMIT 1-15-2054 on Exhibit 2, the permittee shall submit for the review and written approval of the Executive Director, final landscaping plans that are consistent with the project description and plans submitted to the Commission and attached as Exhibits 3 and 5, and consistent with all special conditions of Coastal Development Permit 1-15-2054.
  - i. The plans shall demonstrate, at a minimum, all of the following:
    - a. Only native and/or non-invasive plant species shall be planted. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be planted or allowed to naturalize or persist in landscaped areas. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be planted; and
    - b. Rodenticides containing any anticoagulant compounds, including, but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.
  - (b) The plan shall include, at a minimum, the following components:
    - a. A final landscape site plan map depicting the proposed species, type (e.g., 1-gallon, 5-gallon, bare-root, etc.), and location of all plant materials to be planted; and
    - b. A schedule for the planting of the proposed landscaping.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

## **3. Final Design Plans for All Signage and Trail Amenities**

- A. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF SIGNAGE AND TRAIL AMENITIES AUTHORIZED BY COASTAL DEVELOPMENT PERMIT 1-15-2054, the permittee shall submit for the review and written approval of the Executive Director, final design plans for all signage and trail amenities that are consistent with the project description and plans submitted to the Commission and attached as Exhibits 3 and 5, and consistent with all special conditions of Coastal Development Permit 1-15-2054.
  - (a) The plans shall demonstrate that the signage, viewing platforms, fencing, seating, public art, bike racks, restrooms, trash receptacles, playground/ exercise equipment areas, and other site improvements to be erected at the project site:

- (a) Are visually compatible with the character of surrounding areas with respect to height and bulk, including signs that are no larger than those currently installed on the adjacent Hikshari Trail, and do not significantly obstruct views from public vantage points; and
    - (b) Conform in architectural style, construction materials, surface treatments, and physical appearance with other similar public improvements along the Eureka waterfront.
  - (b) The plan shall contain at a minimum:
    - a. Site plan locations of all signage, lighting, viewing platforms, fencing, seating, public art, bike racks, restrooms, trash receptacles, and playground/ exercise equipment areas;
    - b. Design specifications for the one new light on Waterfront Drive;
    - c. To-scale, dimensioned elevation plan depictions of the signage, including clear representation of sign verbiage, symbology, and size;
    - d. To-scale, dimensioned elevation plan depictions of the Del Norte Street parking area restroom, and the playground and exercise equipment areas; and
    - e. A description of the materials and colors of the sign elements, fencing, seating, bike racks, restrooms, trash receptacles, and playground and exercise equipment.
  - B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
4. **State Lands Commission Review. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-15-2054**, the applicant shall provide to the Executive Director a written determination from the State Lands Commission that:
- A. No State or public trust lands are involved in the development; or
  - B. State or public trust lands are involved in the development and all permits required by the State Lands Commission have been obtained; or
  - C. State or public trust lands may be involved in the development, but pending a final determination, an agreement has been made with the State Lands Commission for the approved project as conditioned by the Commission to proceed without prejudice to that determination.
5. **California Public Utilities Commission (CPUC) Approval. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-15-2054**, the applicant shall provide to the Executive Director a copy of a final permit, license, review-approval, or other authorization issued by the CPUC for all new trail crossings of the North Coast Railroad Authority rail corridor, or evidence that no permit or grant of authority is required. The applicant shall inform the Executive Director of any changes to the project required by the CPUC. Such changes shall not be incorporated into the project until the applicant obtains a Commission

amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

6. **California Department of Transportation (Caltrans) Encroachment Permit.** PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-15-2054, the applicant shall submit to the Executive Director for review and written approval, evidence of an encroachment permit from Caltrans. The encroachment permit or exemption shall evidence the ability of the applicant to develop within State properties, including the U.S. Highway 101 public right-of-way. The applicant shall inform the Executive Director of any changes to the project required by Caltrans. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
7. **Final Mitigation and Monitoring Plan.** PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-15-2054, the applicant shall submit, for the review and written approval of the Executive Director, a revised final compensatory wetland mitigation and monitoring plan for the tidal salt marsh mitigation and the willow shrubland mitigation that conforms to the plan entitled “Mitigation and Monitoring Plan” dated February 2016 and prepared by GHD, except the revised final plan shall include the following requirements:
  - A. “As built” plans: Within 30 days of establishment of the mitigation sites (both the tidal salt marsh mitigation and willow shrubland mitigation), documentation shall be provided to the Executive Director assessing the initial biological and ecological status of the “as built” mitigation sites in accordance with the February 2016 Mitigation and Monitoring Plan and the conditions of this coastal development permit;
  - B. Annual monitoring reports: Monitoring reports shall be submitted to the Executive Director by December 31<sup>st</sup> of each year for the duration of the five-year monitoring period, beginning the first year after the submission of the “as-built” assessment. Each report shall include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the wetland mitigation projects in relation to the goals and performance standards outlined in the February 2016 Mitigation and Monitoring Plan;
  - C. Final monitoring report: A final monitoring report shall be submitted for the review and approval of the Executive Director by December 31<sup>st</sup> of the last year of annual monitoring. The final report shall be prepared in conjunction with a qualified wetlands biologist. The report shall evaluate whether the mitigation sites conforms to the goals and performance standards outlined in the February 2016 Mitigation and Monitoring Plan. The report shall address all of the monitoring data collected over the five-year period;
  - D. Remediation: If the final monitoring report indicates that the mitigation project has been unsuccessful, in part, or in whole, based on the approved performance standards, the permittee shall submit a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved goals and objectives. The revised restoration program shall be processed as



an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required; and

- E. Monitoring and mitigation of anticipated temporary wetland impacts: The salt marsh habitat under and adjacent to the boardwalk totaling 0.35 acres to be temporarily impacted by project construction shall be monitored one year following boardwalk construction and a monitoring report shall be submitted to the Executive Director by December 31<sup>st</sup> of that year. If the monitoring report indicates that the salt marsh vegetation in the 0.35 acre area does not have a similar vegetative density and cover to the surrounding marsh, the City shall submit a revised or supplemental restoration program to mitigate for salt marsh impacts in kind and in place. The revised restoration program shall be processed as an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. **Protection of Special Status Salt Marsh Plants.** The City shall avoid and minimize impacts to special-status salt marsh plants during project construction through the follow measures:

- A. During the final design of the proposed project, the known populations of special-status plants within 100 feet of the project footprint, including, but not limited to Point Reyes bird's-beak, Humboldt Bay owl's-clover, Lyngbye's sedge, and western sand-spurrey, shall be included in the engineering drawings, and all construction activities shall be designed and conducted to avoid impacts to the populations to the maximum extent feasible;
- B. As special-status plant locations may vary from year to year, a targeted seasonally appropriate botanical survey of the proposed project footprint and an area within 100 feet of the project footprint shall be conducted prior to the start of ground disturbing activities during each year of construction;
- C. Prior to the start of construction activities in the proposed project area, exclusionary fencing or temporary flagging shall be erected around the special-status plant populations to ensure avoidance of these areas. If necessary, a qualified botanist shall be present to assist with locating the populations. The exclusionary fencing or flagging shall be periodically inspected throughout each period of construction and be repaired as necessary; and
- D. If impacts to special-status plant individuals occur, the special-status plants shall be conserved through translocation and/or re-planting or re-seeding (by hand by a qualified biologist) into appropriate habitat in the immediate project area so that there is no net loss of the species.

9. **Protection of Bird Nesting Habitat.** No more than 14 days prior to the commencement of construction, a survey for nesting birds in and adjacent to the project construction area shall be conducted by a qualified biologist, unless the project will occur between September 1 and January 31, outside of the avian breeding/nesting season. If any active nesting habitat is identified during preconstruction surveys within 300 feet of the limits of work, construction shall be delayed until after the young have fledged, as determined by additional surveys conducted by a qualified biologist.

10. **Protection of Northern red-legged frogs (*Rana aurora*).** To avoid impacts to Northern red-legged frogs, a pre-construction survey for the northern red-legged frog shall be performed by a qualified biologist immediately prior to construction within 50 feet of all suitable habitat in the construction area. Surveys shall be conducted each day in those areas where frogs could potentially be impacted. If a northern red-legged frog is found, the biologist shall move it to suitable habitat in a safe location outside of the construction zone. In the event that a frog is observed in an active construction zone, the contractor shall immediately halt construction activities until a biologist has moved the frog to a safe location in similar habitat outside of the construction zone.
  
11. **Construction Responsibilities.** The permittee shall comply with the following construction-related requirements:
  - A. All ground disturbing activity and asphaltic-concrete paving operations shall be performed during dry-weather periods only, when the National Weather Service's Northwestern California forecast for the Eureka area predicts a less than 50 percent chance of precipitation for the timeframe in which the work is to be conducted. If rainfall is forecast after construction has commenced and before construction is complete, any exposed soil areas shall be promptly mulched with weed-free straw or covered with sheeting and secured with sand bagging or other appropriate materials before the onset of precipitation. Adequate and effective erosion and sediment control measures shall be used to prevent sediment-laden water from entering coastal waters and wetlands;
  - B. All construction activities on, over, or adjoining salt marsh and other coastal wetlands and waters, except for the mitigation work outlined in the final Mitigation and Monitoring Plan detailed in Special Condition 7 above, shall occur between May 15<sup>th</sup> and October 31<sup>st</sup> of each year of construction;
  - C. Construction activities authorized by this permit that occur within or adjacent to tidal wetlands and waters shall be conducted during periods of low tides only;
  - D. No construction materials, debris, or waste shall be placed or stored where it may be subject to entering coastal waters or wetlands;
  - E. Suitable BMPs, such as silt fences, straw wattles, or catch basins, shall be placed below all construction activities at the edge of surface water features to intercept sediment before it reaches the waterway. These structures shall be installed prior to any clearing or grading activities. Further, sediment built up at the base of BMPs shall be removed before BMP removal to avoid any accumulated sediments from being mobilized post-construction;
  - F. To minimize wildlife entanglement and plastic debris pollution, the use of temporary rolled erosion and sediment control products with plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers used in fiber rolls, erosion control blankets, and mulch control netting) is prohibited. Any erosion-control associated netting shall be made of natural fibers and constructed in a loose-weave design with movable joints between the horizontal and vertical twines;
  - G. Any excess excavated material and other construction debris resulting from construction activities shall be removed immediately upon completion of component construction, and shall be disposed of at a disposal site outside the coastal zone or

- within the coastal zone pursuant to a valid coastal development permit. Any potentially hazardous waste materials would be disposed of at an approved Class II landfill that is equipped to handle hazardous waste;
- H. On-site native vegetation shall be maintained to the maximum extent possible during construction activities. To ensure construction occurs in the designated areas and does not impact environmentally sensitive areas, the boundaries of the work area shall be fenced or marked with flagging;
  - I. No uncured concrete or runoff from uncured concrete shall be allowed to enter coastal waters. Concrete paving and grinding operations, and storm drain inlet protection best management practices shall be employed to prevent concrete grindings, cutting slurry, and paving rinsate from entering drop inlets or sheet-flowing into coastal waters. Concrete delivery vehicle wash-out maintenance at the project site is prohibited;
  - J. If treated wood is used in trail facilities and amenities such as the viewing platforms and signage, the following additional BMPs shall be implemented: (i) no creosote-treated wood shall be utilized; (ii) whenever possible, cutting or drilling of treated wood shall occur at least 100 feet away from coastal waters and wetlands, and any sawdust, drill shavings, and wood scraps shall be contained and collected to prevent the discharge of treated wood to the marine environment; and (iii) treated wood materials shall be stored during construction in a contained, covered area to minimize exposure to precipitation.
  - K. Equipment when not in use shall be stored in upland areas at least 50 feet away from surface water features, including Humboldt Bay, PALCO Marsh, and Eureka Slough;
  - L. Any fueling, maintenance, and washing of construction equipment shall occur in confined upland areas specifically designed to control runoff and located more than 100 feet away from coastal waters; and
  - M. Fuels, lubricants, and solvents shall not be allowed to enter coastal waters or wetlands. Hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site. Any accidental spill shall be rapidly contained and cleaned up.
12. **Avoidance of Soil and Groundwater Contamination.** PRIOR TO COMMENCEMENT OF CONSTRUCTION OF PHASE C OF THE TRAIL AUTHORIZED BY COASTAL DEVELOPMENT PERMIT 1-15-2054 on Exhibit 2, as recommended by the Hazardous Materials Corridor Study, Eureka Waterfront Trail Phase C Tydd Street Project (GHD, 2014), the permittee shall:
- A. Complete pre-construction soil borings to characterize soil and groundwater, and submit the results of soil and groundwater sample analysis for the review and approval of the Executive Director; and
  - B. Prepare and submit a Construction Soil and Groundwater Management Plan for the review and approval of the Executive Director.
    - i. The plan shall demonstrate that all contaminated soil and groundwater encountered during construction shall be contained, handled, and properly

- disposed of in a manner that prevents discharge of contaminated soil and groundwater to the surrounding environment;
- ii. The plan shall provide for field screening during construction activities, and sampling of any impacted soils and groundwater encountered with characterization for off-site disposal; and
  - iii. The plan shall include proposed containment, handling, and disposal methods that require special handling of impacted groundwater, impacted soil segregation, and manifested disposal if necessary.
13. **Assumption of Risk.** By acceptance of this permit, the City of Eureka as applicant acknowledges and agrees: (a) that the site may be subject to hazards from earthquakes, liquefaction, tsunami run-up, flooding, and erosion; (b) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (c) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (d) to indemnify and hold harmless the Commission, its officers, agents and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
14. **Protection of Archeological Resources**
- A. If an area of cultural deposits or human remains is discovered during the course of the project, all construction shall cease and shall not re-commence until a qualified cultural resource specialist, in consultation with the Tribal Historical Preservation Officers (THPOs) of the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria, analyzes the significance of the find and prepares a supplementary archaeological plan for the review and approval of the Executive Director, and either: (a) the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, or (b) the Executive Director reviews the Supplementary Archaeological Plan, determines that the changes proposed therein are not *de minimis*, and the permittee has thereafter obtained an amendment to coastal development permit 1-15-2054.
  - B. If ground disturbing activities greater than twelve inches in depth are required during project construction, than AT LEAST TWO WEEKS PRIOR TO COMMENCEMENT OF SAID GROUND-DISTURBING ACTIVITIES AUTHORIZED BY COASTAL DEVELOPMENT PERMIT 1-15-2054, the permittee shall notify the THPOs from the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria of the construction schedule and arrange for tribal representative(s) to be present to observe ground-disturbing activities if deemed necessary by the THPOs.
  - C. A cultural resources monitor approved by the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria shall be present to oversee all

ground disturbing activities greater than 12 inches in depth authorized by Coastal Development Permit 1-15-2054 unless evidence has been submitted for the review and approval of the Executive Director that the THPOs of these three entities have agreed that a cultural resources monitor need not be present.

15. **Liability for Costs and Attorney’s Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorney’s fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
  
16. **Evidence of Sufficient Property Interest to Develop the Tidal Salt Marsh Mitigation Site and Comply with Conditions of Approval.** PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-15-2054, the applicant shall submit, for the review and approval of the Executive Director, evidence of their legal ability to develop the mitigation site as conditioned herein. Such evidence shall demonstrate that the Applicant is the legal owner of the salt marsh mitigation site (APN 002-231-04 as generally depicted on Exhibit 7, pg.5).
  
17. **Open Space Restriction on Mitigation Properties**
  - A. No development, as defined in Section 30106 of the Coastal Act, shall occur within the 1.28-acre tidal salt marsh mitigation area on APN 002-231-004 that is bordered to the west by the approved coastal trail, to the south by the 1st Street right-of-way, to the east by salt marsh adjacent to the main channel of Eureka Slough, and to the north by a secondary tidal channel that connects to the main channel of Eureka Slough and extends east to west approximately 250 feet north of the 1st Street right-of-way as generally depicted on the site plan and grading and planting plan on pages 2 and 5 of Exhibit 7, or within the 0.08 acre willow shrubland mitigation area on APN 007-071-014 that borders the approved trail as it turns north on Parcel 4 west of the Bayshore Mall as generally depicted on the site plan and details on pages 3 and 4 of Exhibit 7, **except for:**
    - i. The authorized development that is approved by this permit as specifically identified in Finding IV-A, “Project Description and Setting,” and
    - ii. The following development, if approved by the California Coastal Commission as an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required: (a) vegetation clearance if required by the California Department of Forestry and Fire Protection to meet fire safety standards; (b) maintenance of existing utilities and

community services infrastructure; and (c) other allowable uses for the diking, filling, or dredging of wetlands pursuant to Section 30233(a) of the Coastal Act.

**18. Agreement to Record a Deed Restriction if the Mitigation Properties are to be Conveyed**

- A. PRIOR TO ANY CONVEYANCE OF APN 002-231-004 (the APN containing the estuarine saltmarsh mitigation site as generally depicted on the site plan and grading and planting plan on pages 2 and 5 of Exhibit 7), the City of Eureka shall submit to the Executive Director for review and approval, documentation demonstrating that they as landowner have executed and recorded against APN 002-231-004 a deed restriction, in a form and content acceptable to the Executive Director which reflects the restrictions on development of the subject parcel contained in Special Condition 17 above. The deed restriction shall run with the land binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.
- B. PRIOR TO ANY CONVEYANCE OF APN 002-231-004 and prior to submittal to the executive director of the deed restriction required in part A above, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the deed restriction, a formal metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the portions of APN 002-231-004 affected by this condition, as generally described above and shown on Exhibit 7 attached to this staff report.
- C. PRIOR TO ANY CONVEYANCE OF APN 007-071-014 (the APN containing the willow shrubland mitigation site as generally depicted on the site plan and details on pages 3 and 4 of Exhibit 7), the City of Eureka shall submit to the Executive Director for review and approval, documentation demonstrating that they as landowner have executed and recorded against APN 007-071-014 a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on development of the subject parcel contained in Special Condition 17 above. The deed restriction shall run with the land binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.
- D. PRIOR TO ANY CONVEYANCE OF APN 007-071-014 and prior to submittal to the executive director of the deed restriction required in part C above, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the deed restriction, a formal metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the portions of APN 007-071-014 affected by this condition, as generally described above and shown on Exhibit 7 attached to this staff report.
- E. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-15-2054, the applicant shall submit a written agreement, in a form and content acceptable to the

Executive Director, acknowledging and agreeing to implementation of all of the above terms of this condition.

19. **Use, Maintenance, Modification, and Abandonment of Trail.**

- A. The trail authorized by this coastal development permit shall comply with the following:
  - i. The trail shall be a Class I multi-use trail available for shared public use 24 hours a day daily;
  - ii. The permittee shall be responsible for maintenance of the multi-modal trail and motorized vehicles shall be permitted access by the City and its agents for construction, maintenance and emergency purposes;
  - iii. Trail segments (Phases A, B, and C), as identified in Exhibit 2, shall not be open for public use until completion of the trail improvements in that segment;
  - iv. The City shall maintain continuously all trail improvements in good order and repair and shall allow no nuisances to exist or be maintained therein;
  - v. No portion of the trail owned by the City of Eureka in fee or by grant of easement may be abandoned by the City until a grant of easement is transferred to another entity, approved by the Executive Director, who can operate that portion of the trail in conformance with all terms and conditions of this coastal development permit;
  - vi. Any proposed changes, including any proposed change in the above-identified scope and manner of use or any proposed relocation or abandonment of any portion of the multi-modal trail, shall require an amendment to Coastal Development Permit No. 1-15-2054 approved by the California Coastal Commission unless the Executive Director determines that no amendment is legally required.
- B. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-15-2054, the applicant shall enter into a written agreement with the Commission, in a form and content acceptable to the Executive Director, acknowledging and agreeing to implementation of all of the above terms of this condition.

20. **Evidence of Legal Ability of Applicant to Undertake Development on Property Owned by Others and Comply with Conditions of Approval**

- A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-15-2054, the applicant shall submit, for the review and approval of the Executive Director, evidence that clearly demonstrates that the North Coast Railroad Authority or the Northwestern Pacific Railroad Company is the legal owner of APNs 001-013-011; 002-231-002; 003-082-021; 003-082-022; 007-031-002; 007-051-002; 007-061-002; and 007-071-003, as generally depicted on Exhibit 12, and as such has formally agreed in writing that the applicant may undertake development on their respective properties pursuant to Coastal Development Permit 1-15-2054 and as conditioned by the Commission herein.
- B. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-15-2054, the applicant shall submit, for the review and approval of the Executive Director,

evidence that clearly demonstrates that all private property owners of APNs 002-201-008, 002-252-028, 002-191-035, 002-191-025, 002-231-008, 002-231-009, 002-231-013, 001-014-002, 003-021-009, 003-031-006, 003-041-007, 003-051-001, and 003-072-003, as generally depicted on Exhibit 12, are the legal owners of such properties and have formally agreed in writing that the applicant may undertake development on their respective properties pursuant to Coastal Development Permit 1-15-2054 and as conditioned by the Commission herein.

**21. Scope of Use for Trail and Easements**

- A. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF PHASE “A” OF THE COASTAL TRAIL PROJECT AUTHORIZED BY COASTAL DEVELOPMENT PERMIT 1-15-2054 AND GENERALLY DEPICTED ON EXHIBIT 2, the permittee shall submit, for the review and approval of the Executive Director, Grants of Easement that have been executed and recorded over all private property located within Phase A as generally depicted on Exhibit 12. All of the recorded Grants of Easement to the City of Eureka shall permanently authorize use of the Trail as approved by Coastal Development Permit 1-15-2054 with conditions, including Special Condition 19.
- B. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF PHASE “B” OF THE COASTAL TRAIL PROJECT AUTHORIZED BY COASTAL DEVELOPMENT PERMIT 1-15-2054 AND GENERALLY DEPICTED ON EXHIBIT 2, the permittee shall submit, for the review and approval of the Executive Director, Grants of Easement that have been executed and recorded over all private property located within Phase B as generally depicted on Exhibit 12. All of the recorded Grants of Easement to the City of Eureka shall permanently authorize use of the Trail as approved by Coastal Development Permit 1-15-2054 with conditions, including Special Condition 19.
- C. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF PHASE “C” OF THE COASTAL TRAIL PROJECT AUTHORIZED BY COASTAL DEVELOPMENT PERMIT 1-15-2054 AND GENERALLY DEPICTED ON EXHIBIT 2, the permittee shall submit, for the review and approval of the Executive Director, Grants of Easement that have been executed and recorded over all private property located within Phase C as generally depicted on Exhibit 12. All of the recorded Grants of Easement to the City of Eureka shall permanently authorize use of the Trail as approved by Coastal Development Permit 1-15-2054 with conditions, including Special Condition 19.
- D. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-15-2054, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, acknowledging and agreeing to implementation all of the above terms of this condition.

**22. Agreement To Record Deed Restriction if Coastal Trail Property Owned by the City of Eureka is to be Conveyed.**

- A. PRIOR TO ANY CONVEYANCE OF ANY COASTAL TRAIL PROPERTIES OWNED BY THE CITY OF EUREKA (APNs 001-011-010; 001-014-003; 002-191-



- 032; 003-031-002; 003-082-006; 002-231-021; 007-031-003; 007-031-004; 007-051-009; 007-071-014; 002-231-010; 002-231-012; and 003-021-008, as generally depicted on Exhibit 12), the permittee shall submit to the Executive Director for review and approval, documentation demonstrating that the permittee as landowner has executed and recorded against the property to be conveyed a deed restriction, in a form and content acceptable to the Executive Director, which authorizes the Coastal Trail in the scope and manner set forth in Special Condition 19 above. The deed restriction shall run with the land binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.
- B. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-15-2054**, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, acknowledging and agreeing to implementation of all of the above terms of this condition.
23. **Permit Amendment Issuance and Condition Compliance.** Because the development proposed under CDP Amendment 1-15-2054-A1 has already commenced, this coastal development permit amendment shall be deemed issued upon the Commission's approval. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.
24. **Site Maintenance.**
- A. The fill reuse site shall be maintained in a debris-free state, including immediate removal of all refuse, dumped debris, and any potentially hazardous or contaminated materials such as scrap metal, asphalt, tires, and wood containing lead-based paint or wood preservative.
- B. The fill reuse site shall be maintained at a minimum of 70% cover with non-invasive vegetation after initial establishment.
- C. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist at the fill reuse site.
25. **Site Monitoring.** The Permittee shall submit vegetation monitoring reports to the Executive Director every 6 months until the fill reuse site has reached a minimum of 70% cover with noninvasive vegetation and the site has retained a minimum of 70% cover with noninvasive vegetation for one year. The reports shall include photographs, a map, the percentage of the 4.56-acre fill reuse site covered in noninvasive vegetation, the degree to which any problematic or invasive plant species occupy the fill reuse site, and a narrative discussion analyzing the reasons for any failure to achieve or maintain the 70% non-invasive vegetative cover standard and providing recommendations for achieving the standard and for abating problematic or invasive plant species.
26. **Vehicular Access Barriers Replacement and Maintenance Plan.**

- A. WITHIN 6 MONTHS OF THE DATE OF COMMISSION ACTION ON PERMIT AMENDMENT NO. 1-15-2054-A1 (UNLESS EXTENDED BY THE EXECUTIVE DIRECTOR FOR GOOD CAUSE), the Permittee shall submit a plan for the removal of all concrete k-rail perimeter barriers at the fill reuse site and for the installation of new vehicle barriers to be retained on site.
- i. The plan shall demonstrate that the perimeter barriers to be retained on site:
    - a. Shall not obstruct pedestrian public access along the right-of-way of Front Street, the vertical public access trail to the east of the fill reuse area, or the California Coastal Trail;
    - b. Shall be maintained to ensure that vehicles remain blocked from damaging the vegetative cover and contributing to erosion of the site and sedimentation of the bay;
    - c. Shall be comprised of logs, large rocks, wooded fences, or planted hedgerows no taller than four feet and maintained in natural colors free of graffiti to ensure that the barriers are visually compatible with the character of the surrounding area with respect to height and bulk, and shall not significantly obstruct views from public vantage points.
  - ii. The plan shall contain at a minimum:
    - a. A site plan showing the location and footprint of all perimeter barriers;
    - b. Design specifications for all perimeter barriers;
    - c. Measures to control and remove graffiti; and
    - d. A schedule for the inspection and maintenance of the perimeter barriers to ensure they continue to prevent vehicular access to the areas where fill has been placed and seeded and to control graffiti.
- B. WITHIN 1 YEAR OF THE DATE OF COMMISSION ACTION ON PERMIT AMENDMENT NO. 1-15-2054-A1 (UNLESS EXTENDED BY THE EXECUTIVE DIRECTOR FOR GOOD CAUSE), the Permittee shall remove all concrete k-rail at the fill reuse site and replace with perimeter barriers consistent with the approved plan required by Part A of this condition.